

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

Chapter 13

Andrew T. Averill and Michele M. Capuana-Averill

Case No. 8-15-bk-01575-CPM

Debtors

**TRUSTEE'S UNFAVORABLE RECOMMENDATION
AND OBJECTIONS TO CONFIRMATION OF THE PLAN**

TO: Clerk, United States Bankruptcy Court

1. The Debtors' Petition for Relief to Chapter 13 was filed on February 18, 2015.
2. Trustee's Recommendation to the Court. The Trustee cannot recommend confirmation of the Chapter 13 Plan at this time for the following reason(s):
 3. It does not appear that the Debtors have dedicated all disposable income to the proposed Plan as required by 11 U.S.C. §1325(b)(1)(B).
 - a. The Debtors must provide complete copies of all tax return(s) to the Trustee's office no later than April 15th of each year for the preceding year's taxes and all tax refunds must be committed to the plan for each year during the applicable plan period, beginning with tax year 2015. The Debtors should not spend ANY tax refund without prior court approval because they may be required to turn over the refund to the Trustee in addition to regular plan payments.
 4. The Plan violates 11 U.S.C. §1325(a)(4) in that it does not pay unsecured creditors the value of what they would receive in a case under Chapter 7.
 - a. The Trustee hereby requests/has requested the following additional documents to determine if the Debtors have met the best interests of creditors test:

Copies of all bank account statements
Proof of bank account exemption
Document when 2014 tax refund received

5. The Plan fails to meet the requirements of 11 U.S.C. Section 1325(a)(6) and Section 1325(b)(1)(B) because the Debtors are proposing to modify their home mortgage, which proposal is

speculative in nature. Any attempt to modify the mortgage must be completed prior to confirmation and approved by the Court. If a loan modification is approved, the Debtors must amend the Plan and budget accordingly.

/s/ Jon M. Waage
Jon M. Waage
Chapter 13 Standing Trustee
P.O. Box 25001
Bradenton, Florida 34206
Phone: (941) 747-4644
FAX: (941) 750-9266

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Trustee's Unfavorable Recommendation and Objections to Confirmation of the Plan has been furnished electronically and/or by First Class US Mail to **Andrew T. Averill and Michele M. Capuana-Averill**, 2711 Woodland Hills Avenue, Lakeland FL 33803 and **Eva M. Donohue, Esquire**, P.O. Box 5074, Lakeland FL 33807, and the **U.S. Trustee**, 501 East Polk Street, Suite 1200, Tampa, Florida 33602 on this 27th day of March, 2015.

/s/ Jon M. Waage

JMW/KRM/lp